Lembaga Arkitek Malaysia v Cheah Kim Fah & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO A-02-647 OF 1997

NH CHAN, ABDUL MALEK AHMAD AND DENIS ONG JJCA

17 MARCH 1999

Civil Procedure *— Joinder of parties — No suit shall be defeated by reason of a misjoinder — Whether a misjoinder when relief sought differs from one party to the other — Rules of the High Court 1980 O 15 rr 4 & 6*

Limitation *— Accrual of cause of action — Application by architects for declaration that subsequent approvals for registration from local authorities not required under the Architects Ordinance 1951 — When cause of action accrued — Whether respondents were out of time*

Statutory Interpretation *— Construction of statutes — Purposive approach — Meaning of s 6 of the Architects Ordinance 1951 — Whether requires every approval to be registered*

Each of the respondents was a specially authorized person defined under s 6(1)(f) of the Architects Ordinance 1951 ('the Ordinance'). Section 6 essentially gave the effect that a person who has been approved by a building authority for registration under the Ordinance shall be entitled to be so registered but he may submit plans only to, and within the limits of, the building authority which has approved him for registration. It was agreed that the respondents were registered with the appellant and had endorsed in their respective certificates of registration the various building authorities that had approved them for registration and whose registration the respondents had lodged with the appellant. It was also agreed that the respondents were also approved by building authorities other than those that were endorsed on their certificate of registration. The respondents however failed to give the appellant notice of these other authorities and hence their respective certificates of registration did not authorize them to submit plans to these other authorities. In 1989, the appellant notified the respondents of its intention to bring disciplinary action against them. Only in 1990 did the respondents filed an action to enforce a recognizance and for a declaration that since they were already registered under the Ordinance, there was no requirement either under the Ordinance or the relevant Rules to submit to the appellant subsequent approvals for registration from other local authorities. The High Court granted the declaration to the respondents, hence the appeal. The appellant argued that the respondents' action was out of time since the cause of action accrued in 1975. The appellant also raised a question of misjoinder since though there was a common question of law between the parties, the relief sought in the action were not.

Held, allowing part of the appeal with costs:

(1) Section 6(1)(f) and (2) of the Ordinance provides that a person who was desirous of being a specially authorized person needed to do two things — firstly, to get approval from a particular building authority and secondly to get that approval registered (see p 676F–G). It was apparent, therefore, that the certificates of registration of the respondents were not complete as subsequent approvals of certain building authorities had not been included (see p 676I).

(2) There was no concrete evidence that the cause of action was accrued in 1975. No action was actually taken out by the appellant against the respondents until late 1989 after which in 1990 the respondents filed the action. Since this formed the basis of the action brought by the respondents, they were not actually out of time (see pp 673I–674A).

(3) The learned trial judge held that the joinder of plaintiffs or defendants is subject to two conditions. Firstly, the right of relief must in each case be in respect of or arise out of the same transaction or series of transactions. Secondly, there must be some common question of law or fact. It was clear that the respondents did share a common question of law as to the relief they claimed. The Court of Appeal was in no position to disagree with the learned trial judge on this issue and similarly held that the issue of misjoinder raised by the appellant was completely without basis (see p 680C–D).

[Bahasa Malaysia summary

Setiap penentang adalah orang yang diberikan kuasa secara khusus seperti yang ditakrifkan di bawah s 6(1)(f) Ordinan Akitek 1951 ('Ordinan tersebut'). Seksyen 6 memberi kesan bahawa seseorang yang telah diluluskan oleh sesuatu badan berkuasa bangunan untuk pendaftaran di bawah Ordinan tersebut adalah berhak didaftarkan tetapi beliau berhak menyerahkan pelan-pelan hanya kepada, dan di dalam had-had, badan berkuasa yang telah meluluskannya untuk pendaftaran. Adalah telah dipersetujui bahawa penentang-penentang telah berdaftar dengan perayu dan telah mengendorskan di dalam sijil-sijil pendaftaran mereka masing-masing pelbagai badan-badan berkuasa yang telah meluluskan mereka untuk pendaftaran yang mana pendaftaran telah dibuat dengan perayu. Juga telah dipersetujui bahawa penentang-penentang juga telah diluluskan oleh badan-badan berkuasa bangunan yang lain selain daripada yang diendorskan di dalam sijil-sijil pendaftaran mereka. Bagaimanapun, penentang-penentang telah gagal memberikan notis kepada perayu mengenai badan-badan berkuasa tersebut dan oleh itu sijil-sijil pendaftaran mereka tidak membenarkan mereka untuk menyerahkan pelan-pelan kepada badan-badan berkuasa tersebut. Pada tahun 1989, perayu telah memberi notis kepada penentang-penentang mengenai hasrat

perayu untuk mengenakan satu tindakan disiplin terhadap penentang-penentang. Dalam tahun 1990, penentang-penentang telah memfailkan satu tindakan untuk melaksanakan satu pengiktirafan dan untuk satu perisytiharan bahawa oleh kerana mereka telah pun berdaftar di bawah Ordinan tersebut, adalah tidak perlu bagi mereka, sama ada di bawah Ordinan tersebut atau peraturan-peraturan yang berkaitan, untuk menyerahkan kepada perayu kelulusan-kelulusan seterusnya daripada pihak berkuasa yang lain untuk pendaftaran. Mahkamah Tinggi telah memberikan perisytiharan tersebut kepada penentang-penentang dan, oleh itu, rayuan ini. Perayu telah berhujah bahawa tindakan penentang-penentang adalah di luar masa kerana kausa tindakan telah bermula sejak 1975. Perayu juga telah menimbulkan soalan ketidakcantuman kerana walaupun terdapat satu persoalan undang-undang yang sama di antara pihak-pihak tersebut, relief-relief yang dituntut adalah berbeza.

Diputuskan, membenarkan sebahagian rayuan dengan kos:

(1) Seksyen 6(1)(f) dan (2) Ordinan tersebut memperuntukkan bahawa seseorang yang berhasrat menjadi seorang yang diberikuasa secara khusus perlu melakukan dua perkara — pertama mendapatkan kelulusan daripada satu badan berkuasa bangunan tertentu dan kedua mendaftarkan kelulusan tersebut (lihat ms 676F–G). Oleh itu, adalah jelas bahawa sijil-sijil pendaftaran penentang-penentang tidak lengkap kerana kelulusan-kelulusan seterusnya daripada sesetengah badan berkuasa bangunan telah tidak disertakan (lihat ms 676I).

(2) Tiada bukti yang kukuh yang menunjukkan kausa tindakan telah bermula pada 1975. Tiada tindakan telah diambil oleh perayu terhadap penentang-penentang sehingga hujung tahun 1989 yang mana selepas itu pada 1990 penentang-penentang telah memfailkan tindakan tersebut. Oleh kerana ini merupakan dasar bagi tindakan yang dibawa oleh penentang-penentang, mereka tidak di luar masa (lihat ms 673I–674A)

(3) Hakim perbicaraan yang arif telah memutuskan bahawa percantuman plaintif atau defendan tertakluk kepada dua keadaan. Pertama, hak bagi relief mestilah di dalam setiap kes berhubung dengan atau berbangkit daripada tranksaksi yang sama atau satu siri transaksi. Kedua, mesti ada suatu soalan undang-undang atau fakta yang sama. Adalah jelas bahawa penentang-penentang ada berkongsi satu soalan undang-undang yang sama berhubung dengan relief-relief yang mereka tuntut. Mahkamah Rayuan bersetuju dengan hakim perbicaraan yang arif di dalam isu ini dan bersama memutuskan bahawa isu ketidakcantuman yang ditimbulkan oleh perayu sama sekali tidak berasas (lihat ms 680C–D).]

Notes

For a case on misjoinder of parties, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) para 2475.

For cases on accrual of cause of action, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1740–1742.

For cases on purposive approach to interpretation, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1538–1563.

Legislation referred to

Architects Act 1967 ss 2, 24
Architects Ordinance 1951 ss 2, 6(1)(f), (2), 13
Engineers Act 1967 s 8(2)
Limitation Act 1953 s 6(1)(b)
Rules of the High Court 1980 O 15 rr 4(1)(b), 6
Specific Relief Act 1950 s 44

Appeal from: Civil Suit No 22–81 of 1990 (High Court, Ipoh)

M Pathmanathan (*Yusof Khan & Pathmanathan*) for the appellant.
NT Rajah (*V Segaran* with him) (*Maxwell Kenion Cowdy & Jones*) for the respondents.

Abdul Malek Ahmad JCA (delivering the judgment of the court): The forerunner to the Architects Act 1967 ('the Act') was the Architects Ordinance 1951 ('the Ordinance') where in s 2 the definition of 'specially authorized person' was 'a person who is registered under para (f) of sub-s (1) of s 6 of the Ordinance'.

Reproduction of the whole of s 6 of the Ordinance is necessary for our purpose and it reads as follows:

> 6 (1) Subject to the provisions of this Ordinance, the following persons shall be *entitled to be registered under this Ordinance* —
>
> (a) any person who, on the date of application for registration under this Ordinance, is registered as an Architect under the Architects (Registration) Acts of the United Kingdom 1931 and 1938;
>
> (b) any person who, on the date of application for registration under this Ordinance, is registered as an Architect in Register No 1 under the Architects Ordinance, 1941, and who, on the commencement of this Ordinance, is practising the profession of architect in the Federation;
>
> (c) any person who has passed an examination which qualifies him for candidature as an Associate of the Royal Institute of British Architects;
>
> (d) any person who has passed an examination held under paragraph (a) of section 4 of this Ordinance;
>
> (e) any person who satisfies the Minister that he was practising as an architect in the Federation at the date of the coming into force of this Ordinance and who makes application for registration under this Ordinance within two years of such date; and
>
> (f) *any person not otherwise qualified under any of the foregoing paragraphs*

of this subsection who has been approved by a building authority for registration under this Ordinance.

(2) *A specially authorized person may submit plans only to, and within the limits of, the building authority which has approved him for registration.* (Emphasis added.)

In our view, however, the only provisions in the said section relevant to this appeal would be, as earlier italised by us, the opening lines of sub-s (1) in particular the words 'entitled to be registered under this Ordinance', para (f) of sub-s (1) ('the approving paragraph'), and sub-s (2). Essentially, the effect of these three provisions is that a person who has been approved by a building authority for registration under the Ordinance shall be entitled to be so registered but he may submit plans only to, and within the limits of, the building authority which has approved him for registration.

Subsequently, s 2 of the Act, which only came into force as a revised Act on 1 October 1973, has the following definition of 'Building Draughtsman':

'Building Draughtsman' means —

(a) any person who immediately before the appointed date was a specially authorized person within the meaning of the Architects Ordinance, 1951, registered under Part II of the register kept and maintained under that Ordinance but shall not include any person qualified for registration under the Registration of Engineers Act 1967, or the Registration of Surveyors Act 1967; and

(b) any other person whom the Board in its absolute discretion may deem desirable to register having regard to his qualification and experience and to the requirements of any Building Authority.

Against this backdrop, we will now examine the registration details of the respondents. Actually, only the first three respondents are involved in this appeal as from the notes of proceedings in the court below, it has been stated that the fourth respondent had lost interest after the filing of the action. This fact has been brought to our attention by learned counsel for the respondents when he started his submissions before us and this was promptly confirmed by learned counsel for the appellant. Hence, any reference to the respondents hereafter would mean only the first three respondents.

Learned counsel for the appellant argued that the action was actually out of time in view of para (b) of sub-s (1) of s 6 of the Limitation Act 1953 which provides that an action to enforce a recognizance shall not be brought after the expiration of six years from the date on which the cause of action accrued which they said was in 1975.

We could, however, find no concrete evidence in the records that the appellant had rejected certificates of registration of the respondents in 1975. Further, no action was actually taken out by the appellant against the respondents until late 1989 when they threatened to take disciplinary action against them after which in 1990 the respondents had filed the present action. In the meantime, the respondents had continued to submit plans to

the building authorities as they had done prior to 1973. On that premise, we were not convinced that the breach occurred in 1975 and would regard the limitation issue as being devoid of any merit. We are of course fortified in our finding by the fact, as stated earlier, that the appellant threatened the respondents with disciplinary action only in late 1989 and since this formed the basis of the action brought by the respondents, we would hold that they were not actually out of time.

The respondents were already registered under the Ordinance, according to their learned counsel, and there was no requirement either under the Ordinance or the relevant Rules to submit to the Board subsequent approvals for registration from other local authorities. It is this line of thinking on the part of the respondents that had made the relevant action quite necessary.

Learned counsel referred to the relevant excerpt from the notes of evidence recorded in the court below where the first respondent under re-examination by counsel on 17 September 1996 said:

> There is no provision for subsequent approvals granted by local authorities to be registered. Refers to letter dated 27 October 1975 from the Board of Architects written to solicitors for plaintiffs. The letter states that the Board was seeking clarification from the Attorney-General office — produced and marked as P2.

The four-page opinion of the Attorney General's Chambers had been included in the appeal record and, for purposes of brevity and ease of reference, the relevant portion states:

> There was, however, no provision either in the Architects Ordinance 1951 or in the Architects Rules 1955 for the approvals of such additional Building authorities to be notified to the Board established under the said Ordinance or for the certificate of registration to be amended to include in the Certificate such additional building authorities. This was necessarily so, because s 6(1)(f) of the Ordinance provided for the registration of a person who *has been* approved by a building authority for registration under the Ordinance'. Consequently, sub-s (2) of the said s 6 provided that: 'a specially authorized person may submit plans only to, and within the limits of, the building authority which *has approved him for registration.*' This clearly refers to an approval granted prior to the registration under s 6(1)(f) of the Ordinance. There is no provision for an approval for registration under the Ordinance to be granted after the registration; in fact, any such provision would have been a contradiction in terms, as there can be no question of an 'approval for registration' being granted by a building authority after a registration has been effected. Therefore, any approvals for submissions of plans which may have been granted by any building authority to a person registered under s 6(1)(f) of the Ordinance *after* such registration would be ultra vires the Ordinance, and, as such, cannot bind the present Board of Architects to include such building authorities in granting registration as a building draughtsman under the Act.
>
> However, under sub-s (2) of s 24 of the Act, the Board is empowered, inter alia, to receive and consider applications for the addition of building authorities to those specified in the registration of a building draughtsman. Therefore, if the registered building draughtsman in question make

applications under s 24(2) of the Act for the addition of the building authorities which had approved them for submission of plans subsequent to their registration under s 6(1)(f) of the Ordinance, it would be entirely within the competency of the Board to grant such applications. In fact, it would seem that discretion should be exercised in their favour as the building authorities in question appear to have approved them for submission of plans in the genuine belief that they were authorized to grant such approval, and the building draughtsmen (then known as specially authorized persons) had accepted such approvals and carried on business and practice in relation to such building authorities in good faith. Besides, it would appear that under the Architects Ordinance 1951 it was not illegal for persons not registered under the Ordinance to submit building plans to local authorities so long as they did not contravene s 11(1) of that Ordinance, the only disability imposed upon them being disentitlement to recover charges or remuneration in a court.

I observe that it is also contended by some of the building draughtsmen that they were authorized by some of the building authorities to submit plans without any restrictions and they claim that by virtue of the proviso set out at the end of sub-s (5) of s 24 they are entitled to registration as building draughtsmen under the Act without the imposition of restrictions in respect of such building authorities. Their contention in this regard is valid provided the building authorities in question were listed in the Certificate of Registration granted in the Form in Schedule 'D' to the Architects Rules 1955. It will be observed from the terms of this Certificate that a specially authorized person was entitled to submit plans to the building authorities listed thereunder '*in accordance* with such restrictions as may be laid down by such building authorities'. (Emphasis added.)

For reasons to be stated later in this judgment and with due respect to the otherwise highly regarded opinion writer, we were unanimous in holding that he had fallen into error by the approach taken because it is our finding that for every approval by a particular building authority, that approval must be registered.

The problem becomes more acute when we find, as learned counsel for the respondents had submitted, other local authorities which had also given their approvals but had not been included in the certificates of registration under the Ordinance and consequently even in the certificates of registration issued under the Act.

The only problem before us, as we see it, has been stated by the learned trial judge in his judgment as follows:

However over a period of time these specially authorized persons have secured approvals for submission of plans from other building authorities, in addition(al) to those listed in their original certificate of registration. The moot point is whether the defendants are legally bound under the Act to give cognizance and approval for the registration of these building authorities which were not included in the certificate of registration of the plaintiffs.

It is an indisputable fact that these approvals of other building authorities, besides those listed in the certificate of registration, were obtained only after the said certificates of registration were issued. In my view there is no provision in the Architects Rules 1955 or in the Architects Ordinance for the approval of such *additional* Building Authorities to be notified to the defendants. (Emphasis added.)

It is abundantly clear from these two paragraphs that the learned trial judge had also made the same mistake.

The facts are not exactly in dispute. As stated by learned counsel for the appellant in his submissions in the court below:

> It is common ground that all the four plaintiffs were registered with the Board and had endorsed in their respective certificates of registration the various building authorities that had approved them for registration *and* whose registration the four plaintiffs had lodged with the Board.
>
> It is also common ground that the four plaintiffs were approved by building authorities other than those that were endorsed on their certificates of registration. The four plaintiffs however failed to give the Board notice of these other authorities and hence their respective certificates of registration did not authorize them to submit plans to these other authorities.

Learned counsel for the respondents in his written submissions to the learned trial judge confirmed, with listed particulars, that not all building authorities which had given their approvals had been included in the relevant certificates of registration.

Having referred to the relevant provisions in the Ordinance, we take the view that each of the respondents is a specially authorized person under the Ordinance which term is defined in s 2 thereof as a person who is entitled to be registered under the approving paragraph after being approved by the relevant building authority for registration under the Ordinance. Consequently, that specially authorized person may submit the plans only to and within the limits of the building authority which has approved him for registration.

What does this mean? To us, it means that a person, who is not otherwise qualified to be an architect by the other means provided in the said s 6 of the Ordinance, may obtain approval from a building authority to be registered as a specially authorized person and functioning as such, he can only submit plans to and only within the limits of the building authority which had approved him for registration. Logically, it would mean that every approval has to be registered. This is because a person who is desirous of being a specially authorized person needs to do two things — firstly to get approval from a particular building authority and secondly to get that approval registered. Getting approved without getting registered for that particular approval would not be, in our view, sufficient to be recognized as a specially authorized person. What good would the certificate of registration be if the relevant building authority which had given approval is not included?

It is apparent, therefore, that the certificates of registration of the respondents were not complete as subsequent approvals of certain building authorities had not been included. It must be observed here that subsequent approvals may be added either immediately or when the certificates of registration are renewed every calendar year by virtue of s 13 of the Ordinance. The purpose of renewal, in fact, would be a convenient way to update the particulars even if the addition has not been done promptly.

With the coming into force of the Act on 1 October 1973, local authorities were no longer involved. Section 24 of the Act, especially the first proviso, then becomes relevant. The said section, reproduced below in toto with the first proviso italised, reads

(1) Upon the registration of a Building Draughtsman the following restrictions shall apply —

(a) he may submit plans only to, and within the limits of the Building Authority for which area his application for registration has been approved; and

(b) he shall be entitled to submit plans of buildings only in accordance with the restrictions specified in subsection (5) as may be imposed by the Board.

(2) The Board may at any time on the application of a registered Building Draughtsman vary the restrictions for the time being imposed upon him pursuant to sub-s (1) by substituting therefor the alternative restriction prescribed by sub-s (5) or by adding thereto or deleting therefrom any Building Authority specified under subs (1)(a).

(3) No person who is employed by a limited company, building contractor, manufacturer or commercial firm shall be entitled to be registered under this Part.

(4) No registered Building Draughtsman shall practise under the name of a limited company or under the protection of limited liability.

(5) The restrictions referred to in subs (1)(b) shall be in one of the following forms, that is to say:

(i) he shall be entitled only to submit plans of buildings not exceeding two-storeys in height and not involving reinforced concrete or structural steel framework except lintols not exceeding 2.5 metres in span providing that the total built-up floor area does not exceed 300 square metres in any one project submitted for approval; or

(ii) he shall be entitled to submit plans of buildings not exceeding one-storey in height and not involving reinforced concrete or structural steel framework except lintols not exceeding 2.5 metres in span providing that the total built-up floor area does not exceed 100 square metres in any one project submitted for approval

Provided that in respect of a Building Draughtsman who was a specially authorized person within the meaning of the Architects Ordinance 1951, the restrictions imposed on him under this section shall not be less favourable than those which may have been imposed on him immediately before the appointed date.

Provided further that in respect of a Building Draughtsman in East Malaysia who was practising or carrying on business as a building draughtsman for at least twelve months before the appointed date, the provisions of subsections (1) and (5) shall not apply and subsection (2) shall be construed as if all the words appearing after the words 'imposed upon him' had been deleted. (Emphasis added.)

Our understanding of the first proviso is that the restrictions imposed on a building draughtsman under the Act cannot be less favourable than those

imposed on a specially authorized person under the Ordinance but this necessarily implies that a building draughtsman cannot claim to have been approved under the Act by a particular building authority which he has not actually included in his certificate of registration as a specially authorized person under the Ordinance.

Learned counsel for the respondents had also referred us to Ipoh High Court Originating Summons No 41 of 1977 where the questions posed by a firm of engineers against the Lembaga Bandaran Cameron Highlands and the appellant here were whether upon a true construction of the Act and the Engineers Act 1967, there is any provision therein preventing the applicants, who are registered with local authorities for submission of building plans, from continuing to do so and whether upon the true construction of s 8 of the Engineers Act 1967, with particular reference to sub-s (2) thereof, the applicants being registered with the first defendant and having been submitting building plans to the first defendant in the past, are entitled to continue submitting building plans to the first defendant subject to the conditions of registration.

The order dated 20 March 1979 was that:

> It is hereby declared that on a true construction of s 8 sub-s (2) of the Registration of Engineers Act 1967 the applicants being registered with the first respondent are entitled to continue submitting building plans to the first respondent for their due consideration subject to the conditions of registration.

He also referred to an originating motion vide Ipoh High Court Originating Motion No 2 of 1977 where the prayer was for an order that pursuant to s 44 of the Specific Relief Act 1950 the first respondent herein do immediately consider the plans submitted by the applicants against the Lembaga Bandaran Cameron Highlands and the appellant here.

The order, also on the 20 March 1979, states:

> It is ordered that pursuant to s 44 of the Specific Relief Act the first respondent herein do immediately consider the plans submitted by the applicants:
>
> And it is also ordered that the first respondent do pay the costs of this motion:
>
> And it is lastly ordered that the applicants' application against the second respondent be struck out with no order as to costs.

Learned counsel for the respondents made a valiant attempt to persuade us that these orders may have some bearing on the issues before us. However, we need to appraise ourselves of the fact that the first order relating to the originating summons is with regard to the Engineers Act 1967 and not the Act and the second is made pursuant to the Specific Relief Act 1950. Further, the two orders are in essence a direction for the appellant to consider plans submitted by the two engineers but we fail to see, in the absence of any proper grounds of judgment in that case, how the two orders can be said to be applicable as regards the issues before us. In fact, there is nothing in the two orders that dictate that they are to be binding on other cases involving engineers, architects and building plans. At best, it is only

binding on the parties in those two cases.

The prayers in the statement of claim here are for:

(a) a declaration that the plaintiffs are entitled to submit plans to the local authorities in accordance with the approvals granted to them;

(b) an injunction be issued against the defendant restraining them from proceeding with the disciplinary action fixed for hearing on 10 April 1990 or at any time thereafter or from taking any other form of action against the plaintiffs or any of them so long as the plaintiffs acted within the limits set by the local authority concerned;

(c) damages for the loss suffered by each of the plaintiffs as a result of representations made by the defendant against consideration of the plans submitted by the respective plaintiffs;

(d) costs;

(e) further and other relief.

It is our view from a proper reading of s 6, with the definition of 'specially authorized person' in s 2, of the Ordinance that, for any approval by a particular building authority to be operative, there must be a registration to that effect. A certificate of registration of a specially authorized person must contain a list of all the building authorities he has obtained approval from. As the certificate of registration is renewable annually, updating the certificate should not be a problem. The specially authorized person cannot expect the appellant to recognize a building authority which has given approval but is not included in the certificate of registration.

If a specially authorized person does not possess a certificate of registration as having obtained the approval of a particular building authority under the Ordinance, he is actually not so registered and cannot submit plans to that building authority. It follows that with the coming into force of the Act, he cannot automatically become a building draughtsman for that particular building authority if there has been no registration to that effect under the Ordinance.

Learned counsel for the appellant had also raised the question of misjoinder. On this point the learned trial judge remarked that it was the appellant's contention that there was a procedural flaw in this action as the respondents were not entitled in law to bring this action jointly as even though there was a common question of law between the parties, the reliefs claimed in the action are not, in respect of or arise out of the same transaction or series of transactions. Further, the appellant had pointed out that each respondent had a separate cause of action based on a factually different background.

The learned trial judge referred to O 15 r 4(1) of the Rules of High Court 1980 ('the Rules') which reads as follows:

> Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where —
>
> (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and

(b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

The learned trial judge added that it must be emphasized that the joinder of plaintiffs or defendants is subject to two conditions namely that the right of relief must in each case be in respect of or arise out of the same transaction or series of transactions, and there must be some common question of law or fact.

He concluded that it is abundantly clear that the respondents, who are the plaintiffs in this particular instance, did share a common question of law as to the reliefs claimed by them, mainly for a declaration that they are entitled to submit plans to the local authorities from whom they had obtained the relevant approvals, which have so far been denied to them over a period of time by the appellant, the defendant in the court below. It would from the evidence, he held, fall within the purview of a series of transactions for the purposes of O 15 r 4(1)(b) of the Rules. Even if he was held to be wrong on the law in respect of O 15 r 4 of the Rules, he added, O 15 r 6 of the Rules explicitly states that no suit shall be defeated by reason of a misjoinder. We were in no position to disagree with the learned trial judge on this issue and similarly hold that the issue of misjoinder raised by the appellant here is completely without basis.

Although the arguments of learned counsel for the appellant on the issues of limitation and misjoinder did not find favour with us, we agreed with him on the question of the statutory requirement for registration which is the crux of the appeal. Accordingly, we would allow the appeal with costs here and in the court below. The deposit is refunded to the appellant. The judgment of the court below is set aside with the result that the action is dismissed. Consequently, since the injunction dated 9 April 1990 is now dissolved, we are remitting the matter to the court below for damages to be assessed.

Appeal allowed in partial.

Reported by Zahid Taib